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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Applications of	)	MM Docket No. 93-156
	)	
Trinity Christian Center of	)	
Santa Ana, Inc., d/b/a TRINITY	)	
BROADCASTING NETWORK	)	File No. BRCT-911129KR
	)	
For Renewal of License of	)	
Commercial Television Station	)	
WHSB-TV, Monroe, Georgia	)	
	)	
and	)	
	)	
GLENDAL BROADCASTING COMPANY	)	File No. BPCT-920228KE
	)	
For Construction Permit	)	
Monroe, Georgia	)	

To: Honorable Joseph Chachkin  
Administrative Law Judge

REPLY TO PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

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Date: November 4, 1994

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**SUMMARY**

Glendale has provided a more than adequate justification for a waiver of Section 73.610 of the Commission's rules. Glendale was not required to show the unavailability of fully-spaced sites because Trinity is short-spaced. There is no cognizable difference between Trinity's station and Glendale's proposal. The WFOX site is irrelevant. Each of the public interest factors cited by Glendale supports its waiver request, and the short-spacing issue must be resolved in its favor.

Trinity made no effort to ascertain the needs and interests of its community of license. It repeatedly failed to follow its own ascertainment procedures. There was little connection between the ascertainment it did perform and its programming. Trinity programmed WHSG as a high-powered translator of its flagship California station. Not one person from Monroe or Walton County appeared on the station, and not one issue or event peculiar to those areas was covered on the station. There is no record public witness testimony or community involvement. Finally, the Presiding Judge must take into account the record of misconduct and deception by Trinity's directors and officers developed in MM Docket No. 93-75. Under every renewal expectancy factor, Trinity's record is substandard and minimal. No renewal expectancy may be awarded.

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AND CONCLUSIONS OF LAW

Glendale Broadcasting Company (Glendale), by its attorneys, now replies to the proposed findings of fact and conclusions of law filed by Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network (Trinity) and by the Mass Media Bureau (Bureau) on October 7, 1994. The failure to respond to particular finding of fact or conclusion of law is not a concession that the finding or conclusion is accurate, relevant or meritorious.

## **I. GLENDALE SHORT-SPACING ISSUE**

1. The Bureau correctly concludes that Glendale is entitled to a waiver of §73.610 of the Commission's rules, the television short-spacing rule. Bureau Findings, Pp. 4-5, Bureau Conclusions, Pp. 14-16. The Bureau notes that while Glendale is short-spaced by 18.14 km to the reference point for channel \*63, Montgomery, Alabama, Trinity's existing operation is short-spaced to the same reference point by 18.14 km, and there is no meaningful difference between the two proposals. While Trinity attempts to argue that Glendale is not entitled to a waiver (Trinity Findings, Pp. 5-11, Trinity Conclusions, Pp. 54-66), its arguments are squarely contrary to applicable precedent and rulings of the Presiding Judge. Glendale has made a very strong case that the public interest supports a grant of a waiver, and the short-spacing issue must be resolved in its favor.

### **A. No Need to Show Availability of Fully-spaced Sites**

2. Trinity begins its proposed findings of fact by repeatedly asserting that Glendale never searched for a fully-spaced site (i.e., a site more than 280.8 kilometers from the reference point for the Montgomery allocation). Trinity Findings, ¶¶7-11 Pp. 5-7. Glendale never searched for a fully-spaced site because it was not required to do so. As Glendale showed in its proposed conclusions, a short-spaced applicant challenging the renewal application of a short-

spaced station is not required to show the unavailability of fully-spaced sites when the renewal applicant is short-spaced. Glendale Conclusions, ¶¶132-135 Pp. 78-81. The Bureau also recognizes that principle. Bureau Conclusions, ¶¶2-3 Pp. 14-15.

3. Trinity cites many cases for the principle that an applicant seeking a waiver of the short-spacing rule must make a threshold showing that no fully-spaced sites are available. Trinity Conclusions, ¶¶90-91, 101, Pp. 55-56, 63-64. None of the cited cases are comparative renewal cases where the incumbent licensee was short-spaced. In other types of cases, Glendale does not dispute that such a threshold showing must be made. The decisions in EZ Communications, Inc., 8 FCC Rcd 2448, 2450-2451 (MMB 1993) and Royce International Broadcasting, 2 FCC Rcd 1368 (MMB 1987) clearly make that requirement inapplicable to a renewal challenger when the incumbent is short-spaced.

4. Trinity acknowledges the existence of the EZ and Royce cases but argues that notwithstanding those cases, Glendale was still required to show the unavailability of fully-spaced sites. Trinity Conclusions, ¶¶99-100 Pp. 62-63. Trinity's argument is totally inconsistent with the holdings of those cases. The Mass Media Bureau held in EZ that a renewal challenger had the right to be processed under the same standard as the existing licensee and that:

[w]here a grant would not increase cognizable interference above and beyond that presently caused by the existing licensee the Commission will not dismiss or deny the challenger's application.

Trinity is making the identical argument that was rejected in EZ: that the challenger must specify a fully-spaced site even if the incumbent licensee is short-spaced. The pro-incumbent bias in Trinity's position is readily apparent. If Trinity desired to move the WHSG transmitter site, it could specify any site at least 262.66 kilometers from the Montgomery reference point.<sup>1</sup> It wants to restrict Glendale to sites more than 280.8 kilometers from that reference point. In other words, it wants to deny Glendale the right to use sites that Trinity could use. There is nothing equitable or fair about such a rule. Moreover, Trinity's argument ignores the basic point that if Glendale's waiver request is denied, WHSG will still be operating with a short-spacing of 18.14 kilometers. The choice in this proceeding is not between a short-spacing of 18.4 kilometers and a fully-spaced site. It is between a short-spacing of 18.14 kilometers and a short-spacing of 18.4 kilometers.

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<sup>1</sup> Trinity's claim that "TV incumbents must propose fully spaced sites if they relocate" (Trinity Conclusions, ¶100 P. 63) is incorrect in its case. As noted by the Bureau, Glendale (or Trinity) had the right to specify a site short-spaced by less than 18.14 kilometers. Bureau Conclusions, ¶2 P. 14.

5. Trinity ignores the fundamental point that Glendale's proposed station would have no discernible impact on the Montgomery allocation over and above the impact already caused by the WHSG site. Glendale Ex. 3, P. 7. The Bureau correctly describes any difference between Trinity's operation and Glendale's proposal as "not legally cognizable" and "simply inconsequential." Bureau Conclusions, ¶4 P. 15. Trinity does not suggest that there is any difference. In the absence of such a difference, it would be a denial of due process and equal protection to deny Glendale a waiver while allowing Trinity to continue its indistinguishable operation. See Melody Music, Inc. v. FCC, 345 F.2d 730, 4 RR 2d 2029 (D.C. Cir. 1965).

6. Trinity's argument that Glendale is seeking preferential treatment (Trinity Conclusions, ¶100 P. 63) is baseless. It is Trinity that is seeking preferential treatment by arguing that Glendale must be fully-spaced while Trinity can be short-spaced. While Glendale is more short-spaced by the "not legally cognizable" amount of .26 kilometers, it has made a strong public interest showing supporting that de minimis increase. While Trinity cites the Commission's rule for the proposition that short-spaced stations may not increase their short-spacing, the Commission waives that rule to allow such increases upon a proper showing. Such increases were authorized in Western



Broadcasting Corp. of Puerto Rico, 69 RR 2d 718 (MMB 1991) and in The Outlet Co., 11 FCC 2d 528, 12 RR 2d 387 (1968). Trinity's allegation that there is "a very strong Commission policy against allowing any aggravation of existing short-spacings" (Trinity Conclusions, ¶94 P. 58) is shown by the Western and Outlet cases to be baseless. While any increase in an existing short-spacing must be justified, there is no basis for treating an increase in an existing short-spacing any differently than the creation of a new short-spacing of the same amount. There was no requirement for Glendale to search for or to show the unavailability of fully-spaced sites.

#### B. The WFOX Site

7. Trinity places much importance upon the evidence it presented concerning the WFOX(FM) site owned by Shamrock Broadcasting. It proposes findings that this fully-spaced site is suitable and available to Glendale. Trinity Findings, ¶¶16-19 Pp. 10-11. It argues that the alleged availability of the WFOX site requires denial of Glendale's waiver request and shows that there would be no bias in requiring Glendale to specify a fully-spaced site. Trinity Conclusions, ¶¶103-106 Pp. 65-66. The WFOX site is irrelevant for two reasons. First, since Glendale has the right to specify a short-spaced site, the availability of fully-spaced sites is of no relevance to this proceeding. Second, the record does not

support Trinity's claim that the site would be available to Glendale. Indeed, Randy Mullinax, the Chief Engineer of WFOX, was unable to say whether the site would be available to Glendale. Moreover, Trinity's argument concerning that site is sheer hypocrisy because Trinity rejected that site and moved away from it.

8. Trinity's proposed findings concerning the alleged availability of the WFOX site are unreliable. Trinity conveniently ignores the following testimony of Mr. Mullinax which undercuts Trinity's position: (1) his declaration that there was no warranty that space would be available and that no offer to lease was being made (Glendale Ex. 4); (2) Mr. Mullinax's admission that he could not say whether the site was available to Glendale because he had not reviewed Glendale's technical proposal (Tr. 208-209);<sup>2</sup> (3) that Mr. Mullinax was not primarily responsible for setting lease terms and that he could not state any such terms; and (4) that Shamrock was not willing to hold space for any potential user who was not actively negotiating a lease. See Glendale

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<sup>2</sup> TBF attempts to avoid this obvious problem by citing testimony that the tower was built in 1984 to accommodate some type of Dielectric antenna and noting that Glendale specifies a Dielectric antenna. TBF Findings, ¶17 P. 11. There is no evidence, however, that the Dielectric antenna contemplated in 1984 is similar to the model proposed by Glendale in 1992. Moreover, there is no evidence that Mr. Mullinax ever considered any other portion of Glendale's proposal (e.g., transmission line, space for transmitter, etc.).

Findings, ¶¶122-127 Pp. 70-71. Clearly, no finding can be made that the WFOX site would be available to Glendale.

9. Trinity's argument that the availability of one fully-spaced site means there would be no bias in requiring Glendale to specify a fully-spaced site (Trinity Conclusions, ¶104 P. 65) is specious. Even if Trinity had shown the availability of the WFOX site (which it did not), Trinity would still be attempting to deny Glendale access to a site area which is available to Trinity. A renewal challenger should have the discretion to choose among the same sites that the incumbent can choose among. Trinity is attempting to hold Glendale to a higher standard than applies to Trinity. The EZ, Royce and Las Vegas Valley cases all prohibit such a result.

10. In ¶104 of its proposed conclusions (P. 65), Trinity suggests Glendale should have specified a fully-spaced site "because a win by the challenger would convert a grandfathered short-spaced station to a fully-spaced station." If Trinity is so worried about the public interest, it should move to a fully-spaced site - something it has not offered to do. Indeed, Trinity's arguments about the WFOX site are hypocritical because that is the site that Trinity rejected and moved from when building the station. See Tr. 185-186. What Trinity is arguing is that the WFOX site was not good enough for it but Glendale should be stuck with that site. It

is specious to argue that such a result would not create an impermissible bias in favor of Trinity. The WFOX site has no relevance to this proceeding and provides no basis for denying Glendale's waiver request.

C. Glendale's Public Interest Factors

11. In its proposed findings, Glendale demonstrated that there were many public interest factors supporting its waiver request - the de minimis increase in short-spacing, the fact that Glendale would provide greater protection to the Montgomery allotment than a fully-spaced station operating with maximum facilities, the benefits to aeronautical safety from Glendale's efforts to accommodate the FAA, and the availability of a large area within which an applicant for the Montgomery channel could locate a site if Glendale receives a waiver. Glendale Conclusions, ¶¶136-147 Pp. 81-88. While Trinity attacks Glendale's reliance on certain of these factors (Trinity Conclusions, ¶¶93-98 Pp. 57-62), its arguments are contrary to Commission precedent and ignore the fundamental fact that there is no meaningful distinction between Trinity's station and Glendale's proposal.

12. Trinity argues that what is relevant is not the .26 kilometer increase in short-spacing but the total short-spacing of 18.4 kilometers. Trinity Conclusions, ¶¶93-94 Pp. 57-58. Trinity's argument is illogical. If Glendale's waiver request is denied, the short-spacing between Trinity and the

Montgomery reference point will not magically disappear. As Glendale has already shown, it had the right to be as short-spaced as Trinity is. The choice in this proceeding is between a short-spacing of 18.14 kilometers and a short-spacing of 18.4 kilometers. Glendale only need justify the extra .26 kilometer increase, and that increase is clearly de minimis as defined in Kenter Broadcasting Co., 62 RR 2d 1573, 1577 (1986). Moreover, in Western Broadcasting Corp. of Puerto Rico, supra and The Outlet Co., supra, the Commission focused not on the total short-spacing but on the magnitude of the proposed increase.

13. With respect to Glendale's showing that there would be a large area available for a Montgomery applicant to find a site consistent with the Commission's rules, Trinity argues that "there is no showing that there are in fact sites available within that area or that such sites would be consistent with the Commission's rules." Trinity Conclusions, ¶96 P. 60. Trinity's argument does nothing to diminish the worth of Glendale's showing. In Delta Rio Broadcasting Co., 50 FCC 2d 596, 32 RR 2d 205 (1974), the Commission relied upon a similar showing even though no showing was made that a specific site within that area would be available. Glendale showed that the area in question complied with the Commission's spacing and city-grade coverage rules. See Glendale Ex. 3, Pp. 8-9, 15. Trinity also ignores the fact

that Troy State University, the entity that once held a permit for channel \*63, obtained and specified a site within that zone. See Glendale Ex. 3, Pp. 9, 15.

14. Trinity does not challenge Glendale's showing that it would provide greater protection to the Montgomery allotment than a fully-spaced station operating with maximum facilities. Instead, it argues that equivalent protection is insufficient by itself to justify a waiver and that equivalent protection is a "minor factor." Trinity Conclusions, ¶97 Pp. 60-61. It is wholly academic to debate whether equivalent protection can justify a waiver in the absence of other public interest factors because Glendale has offered other public interest factors. Moreover, the cases cited by Trinity do not establish that equivalent protection is a minor factor. In K-W TV, Inc., 7 FCC Rcd 3617, 3619, 70 RR 2d 1655, 1658 (1992), interference was likely to result from the proposed short-spacing, and that interference was an important reason for denying the waiver. If the presence of interference is an important reason for denying a waiver, the absence of interference is an important justification for a waiver. Murray Hill Broadcasting Co., 8 FCC Rcd 325, 71 RR 2d 1335 (1993) is readily distinguishable from this case because the applicant in that case violated a specific rule limiting its permissible power. Finally, the Commission did not say in Sarkes Tarzian, Inc., 6 FCC Rcd 2465, 69 RR 2d 157 (1991) that

technical proposals to eliminate interference were a minor factor. Indeed, the Commission reaffirmed that it would consider proposals to eliminate interference and took into account such a proposal in that case. 6 FCC Rcd at 2467, 69 RR 2d at 159-160.

15. Finally, Trinity's argument that Glendale's efforts to accommodate the FAA do not support its waiver request (Trinity Conclusions, ¶98 Pp. 61-62) is totally baseless. The Commission considers the aeronautical benefits of a proposed tower in evaluating a waiver request. Sarkes Tarzian, Inc., supra, Caloosa Television Corp., 3 FCC Rcd 3656, 3657, 64 RR 2d 1640, 1643 (1988), Roy H. Park Broadcasting, Inc., 45 RR 2d 1083 (Chief, Broadcast Bureau 1979). Trinity's claim that Glendale moved where it did just to save processing time with the FAA is inaccurate and meaningless. Once the FAA rejected Glendale's original site, Glendale needed to find a site that was acceptable to the FAA. The Commission requires applicants to act with due diligence in filing amendments needed to cure defects. Erwin O'Connor Broadcasting Co., 22 FCC 2d 140, 18 RR 2d 820 (Rev. Bd. 1970). In order to fix the problem, Glendale needed a site that it knew the FAA would accept. If Glendale filed on a site away from the WHSG tower, there was a possibility that the FAA would reject that site because of a VFR route or comments from the aeronautical community. Joint Ex. 2, P. 2. The only site which Glendale could know

was acceptable to the FAA was the area near the WHSG tower.<sup>3</sup> Any amendment to a site that did not have FAA approval could not have solved Glendale's FAA problem. Trinity does not cite one case which demonstrates that the Commission should ignore its normal policy of considering the aeronautical benefits of Glendale's proposal, and the Presiding Judge must consider those benefits in evaluating Glendale's waiver request.

D. Glendale's Alternative Request

16. In its proposed findings and conclusions, Glendale noted that it had pending a request to eliminate the short-spacing between the Montgomery reference point and both its site and the WHSG site by moving the Montgomery reference point. Glendale Findings, ¶129 Pp. 72-73. It requested that if the Presiding Judge decided that Glendale was not entitled to a waiver, the Presiding Judge should then not deny Glendale's application but grant it subject to whatever action the Mass Media Bureau may take with respect to Glendale's request. Glendale Conclusions, ¶¶148-150 Pp. 89-90.

17. On October 18, 1994 (after Glendale filed its proposed findings and conclusions), the Acting Chief of the Mass Media Bureau's Allocations Branch issued an order denying Glendale's request. A copy of that request is attached to

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<sup>3</sup> While Glendale could have specified an existing tower without FAA approval (Joint Ex. 2, Pp. 2-3), there is no evidence that any such tower was available to or suitable for Glendale.



these reply findings. Under these circumstances, Glendale's alternative request is moot. The Bureau's ruling provides no basis for denying Glendale's request for a waiver. The public interest factors supporting that request still exist. In the second to last paragraph of the letter, the Acting Chief of the Allocations Branch explicitly notes Glendale's concerns could be resolved by the grant of a waiver in this proceeding. Since the Mass Media Bureau is supporting Glendale's waiver request, the denial of the request to change reference coordinates cannot be said to be an opposition to Glendale's waiver request. If Glendale receives a waiver, it is of no importance whether the reference coordinates are changed. Accordingly, while Glendale's alternative request is moot, the record fully supports the grant of a waiver.

E. Conclusions Re Short-Spacing Issue

18. Glendale has provided a more than adequate justification for a waiver of Section 73.610 of the Commission's rules. Glendale was not required to show the unavailability of fully-spaced sites because Trinity is short-spaced. There is no cognizable difference between Trinity's station and Glendale's proposal. The WFOX site is irrelevant. Each of the public interest factors cited by Glendale supports its waiver request, and the short-spacing issue must be resolved in its favor.

## **II. WHSG RENEWAL EXPECTANCY**

### **A. Introduction**

19. Trinity argues that it rendered substantial service to the community and is entitled to a renewal expectancy. Trinity Findings, ¶¶20-76, Pp. 12-39, Trinity Conclusions, ¶¶107-139 Pp. 66-86. The Bureau offers a very brief renewal expectancy analysis and concludes that Trinity is entitled to some unspecified level of renewal expectancy. Bureau Findings, ¶¶10-22 Pp. 6-13, Bureau Conclusions, ¶¶7-12 Pp. 16-20. Neither analysis can be accepted. Both the Bureau and Trinity ignore several critical defects in Trinity's record and improperly attempt to shift the burden of proof to Glendale. Trinity relies on a series of arguments that have no support in precedent or in the record. The Bureau's analysis of the record is much too sketchy to be relied upon, and it misstates the record in certain critical respects.

20. As Glendale showed in its proposed findings and conclusions, there are many defects in Trinity's record. Those defects include: (1) its failure to offer any of its own local programming, (2) its total failure to conduct any ascertainment in Monroe, its community of license, or Walton County, the county Monroe is located in, (3) its total failure to cover a single issue, problem or event peculiar to Monroe or Walton County, (4) its failure to cover several issues which its own ascertainment showed to be top issues in the

portion of the service area where it did conduct ascertainment, (5) Trinity's failure to follow its own ascertainment procedures, (6) the absence of news programming,<sup>4</sup> (7) the absence of editorials, (8) the absence of public witness testimony from the record, (9) the lack of community involvement by Trinity, (10) the lack of a meaningful connection between Trinity's ascertainment and its programming, (11) the fact that by the end of the license term, Trinity was broadcasting an average of less than one PSA a day, and (12) the record of serious misconduct by Trinity's principals developed in the Miami, Florida comparative renewal proceeding. While Trinity acknowledges a few of these defects, it misstates the record in several critical respects and improperly understates the importance of the defects that it does acknowledge. The Bureau's findings are so general and sketchy that these defects are simply ignored. When the record is thoroughly analyzed, the Presiding Judge must conclude that Trinity is not entitled to a renewal expectancy.

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<sup>4</sup> In ¶44 of its proposed findings (P. 24), Trinity proposes a finding that other stations in the Atlanta market broadcast news. The testimony on which that finding was based was stricken. Tr. 94-98.

B. WHSG's Status As a New Station With  
A Short License Term

21. In arguing that it is entitled to a renewal expectancy, Trinity relies heavily upon the fact that WHSG was a new station during the renewal period and that it had a short renewal period in which to develop a record. Thus, Trinity begins its proposed conclusions with a plea that it should be judged by a lower standard because it was a new station with a short term. Trinity Conclusions, ¶¶108-112 Pp. 67-69. It attempts to explain many of its ascertainment problems and lack of local programming by noting that the station was new and Trinity did not have a local studio. It claims that the lack of public witness testimony and community involvement is caused by the newness of the station and the shortness of the license term. Trinity Conclusions, ¶¶131, 133 Pp. 81-82. Trinity has failed to cite one case which supports its assertion that it should be judged by a lower standard. It has failed to show that any of the defects in its record were in fact caused by the newness of the station or the short length of the renewal period. Moreover, Trinity ignores the fact that it has been a Commission licensee since 1974 (Joint Ex. 1, P. 2) and that it should have been able to fulfill its programming and ascertainment responsibilities to Monroe from day one.

22. Trinity does not cite one case which supports its argument. Indeed, the case of Metroplex Communications, Inc.,

4 FCC Rcd 8149, 67 RR 2d 185 (Rev. Bd. 1990) that it cites involved a one year renewal period, but the Board and the Commission judged that licensee by the same five criteria as any other applicant. Trinity does cite a staff policy concerning the processing of license applications and Section 73.1740(a)(2) of the Commission's rules, which allows a television station to operate with a reduced operating schedule during its first three years on the air. Neither the policy nor the rule provides any support for the proposition that an applicant with a one year renewal period should be judged by a lower standard. Indeed, one could readily argue that the Commission's decision to process and to grant the WHSG license application was a judgment that the station would have sufficient time to develop a record of service to the community. The rule concerning minimum operating hours does not exempt new licensees from the requirement to provide programming responsive to ascertained community needs. It has no bearing upon renewal expectancy.

23. Moreover, if Trinity's argument was to have any validity, the record would have to show that the defects in its record were in fact caused by the newness of the station and the short renewal period. Trinity made no serious attempt to make such a showing. For example, the record shows that "a studio suitable for the sort of local production that TBN wanted" was not built during the renewal period (Trinity Ex.

32, P. 9), but Trinity offered no explanation as to why a suitable studio was not built before the station went on the air. Trinity does not allege that it was unable to construct a studio prior to February 1991. Indeed, Trinity did have the capability to originate local programming, but it never took advantage of that opportunity. Trinity Ex. 32, P. 9. Since Trinity had the evidentiary burden of demonstrating its entitlement to a renewal expectancy, it must be concluded that Trinity's failure to produce any of its own local programming was a purely voluntary business decision on its part. There is clearly no physical law which prohibits a permittee from building a studio when it builds the rest of its station.

24. While Trinity relies upon TBN network programming, the content of this programming was not affected in the least by the fact that WHSG was a new station. A comparison of this record with the record in MM Docket No. 93-75 shows that essentially the same network programs are relied upon in both cases. No showing was offered that Trinity changed its network programming in response to the construction of the Monroe station.

25. Trinity's attempt to explain its lack of public witness testimony and community involvement by referring to the newness of the station cannot be accepted. The record contains no explanation as to the absence of these factors. There is no reason why Trinity could not have started

cultivating a relationship or become involved in the community in a period of over one year. Indeed, the licensee in Metroplex Communications, Inc., supra, was able to develop an impressive record of public witness testimony and community involvement in a one year period. The idea that one year is too short a period to expect a licensee to do anything to reach out to the community is preposterous. Moreover, Trinity was able to garner extensive public witness testimony (Trinity Exs. 1-31) - it was just unable to find anyone with anything relevant to say. Trinity's attempt to exempt itself from the standards applied to all Commission licensees cannot be accepted.

26. Trinity attempts to excuse some of its ascertainment failings by the fact that Scott Jackson, the station manager, and the rest of their staff were new to their jobs. Trinity Conclusions, ¶¶111-112, 117 Pp. 69, 73. While the fact that Mr. Jackson was new may explain some of those failings, it does not excuse them. As noted above, Trinity has been a Commission licensee since 1974. Trinity headquarters had a Public Affairs Director and Department that was responsible for supervising the ascertainment process at each station. Trinity Ex. 33, P. 3. While Mr. Jackson was new to conducting ascertainments, it was Trinity the licensee that was responsible for conducting ascertainment, and it had a department that was allegedly supervising this process. The

Public Affairs Department did nothing when no ascertainment was done in the first quarter of 1991 (Glendale Findings, ¶12 P. 6). This experienced Public Affairs Department allowed Mr. Jackson to wait until September 1991 (halfway through the license term) to start interviewing community leaders. Nobody informed Mr. Jackson that some efforts must be undertaken to ascertain the needs and interests of Monroe and Walton County. Glendale Findings, ¶¶15, 18 Pp. 7-8. Nobody in the Public Affairs Department noticed that Mr. Jackson failed to follow Trinity policy in the fourth quarter of 1991 by omitting newspaper articles in his tabulation of top community issues. Glendale Findings, ¶23 P. 11. The responsibility to ascertain the needs and interests of the community of license did not end with Mr. Jackson - it was Trinity's responsibility. Its Public Affairs Department failed to do its job. Trinity had almost twenty years of experience as a broadcast licensee - it cannot pass off its failures to properly ascertain the needs and interests of Monroe as the product of inexperience. WHSG's status as a new station does not entitle it to be treated by more lenient standards than other broadcast stations.

### C. The Burden of Proof

27. One of the key flaws in the findings of both Trinity and the Bureau's proposed findings is that they assume Glendale had the burden of proof of showing that Trinity is



not entitled to a renewal expectancy. The law is clear that Trinity has the burden of proving that it is entitled to a renewal expectancy. Section 309(e) of the Communications Act of 1934, as amended, places the burden of proof upon an applicant to show its entitlement to any sort of comparative credit in a hearing.

28. The burden of proof is important in considering the impact of Trinity's failure to make any effort to include Monroe or Walton County in its ascertainment efforts. The Bureau claims that "it is unclear the extent to which Trinity ascertained the needs, problems and interests of Monroe." Bureau Conclusions, ¶9 P. 18. There is no ambiguity in the record - Trinity made no effort to ascertain the needs and interests of Monroe or Walton County. None of the community leaders interviewed by Trinity were located in Monroe or Walton County. Joint Ex. 5, P. 2. Trinity made no attempt to use the local Walton Tribune in ascertainment. Joint Ex. 5, P. 1.

29. Both Trinity and the Bureau attempt to downplay this failing by arguing that there is no record evidence that the needs, interests and problems of Monroe or Walton County were different from the needs, interests and problems of the portion of the service area where Trinity did conduct ascertainment. Trinity Conclusions, ¶117 P. 73, Bureau Conclusions, ¶9 P. 18. This argument is an improper attempt